

STATE OF NEW HAMPSHIRE

PUBLIC EMPLOYEE LABOR RELATIONS BOARD

BARRINGTON EDUCATION ASSOCIATION, Affiliated with NHEA/NEA	:	CASE NO. T-0298:2
v.	:	DECISION NO. 79018
BARRINGTON SCHOOL BOARD	:	

APPEARANCES

Representing the Barrington Education Association:

David N. Smith, UniServ Director, NHEA
Mark Greenwood, Chief Negotiator
Constance Parsons, Vice President

Representing the Barrington School Board:

Bradley Kidder, Esquire, Counsel
Barry Clough, Superintendent of Schools

BACKGROUND

This is an unfair labor practice complaint arising out of the non-renomination of two teachers at the Barrington Elementary School. Mark Greenwood, Chief Negotiator for the Barrington Education Association and Constance Parsons, Vice President of the Association, received word from the administration that they would not be renominated by Superintendent of Schools Barry Clough for the 1979-1980 school year. This notice was in a letter dated March 13, 1979 presented to them on March 14, 1979 along with an evaluation report indicating a recommendation that they not be renominated.

The Barrington Education Association, NHEA/NEA brought unfair labor practice complaints against the Barrington School Board and Superintendent Barry Clough for violation of RSA 273-A:5 (a), (c) & (d) indicating that the non-renomination was due to union activities. The School Board denied these charges. Hearings were held before the Public Employee Labor Relations Board in Barrington on May 15, 1979 and at the Board Offices in Concord on July 12, 1979.

FINDINGS OF FACT

The Board finds the following facts in this matter are relevant to its decision and were established by the testimony and exhibits at the hearings.

Its obvious to the Board that there is a dispute in Barrington concerning the operation of the schools. It is also obvious that there is union activity of which the superintendent and administrators of the schools are aware.

The two teachers who have complained that their non-renomination was due to union activity are among those teachers employed at the elementary school and there is nothing regarding their employment or past performance which was presented at hearing which would differentiate them from any other teachers at the elementary school.

Various changes took place in the administration of the elementary school under the supervision of the school board and superintendent of schools during the past several years. The school went from one supervised by a principal whose office was not in the building, to one supervised by an administrative intern whose style was collegial, to one in which there was a principal whose style is more traditional. These changes were made with the full knowledge of the school board and under its direction and caused debate and comment among the teachers, parents and community. Because of these changes and the individuals involved, testimony indicated that "personality conflicts" and differences of opinion on policy arose between many teachers and the principal of the school.

Evidence at hearing indicated that the normal, routine evaluations of Mark Greenwood and Constance Parsons prior to the date of the letters of non-renomination found that their performance was either adequate or more than adequate. (See Association Exhibits 1-A, 1-B, 1-C, 1-D, 8-A, 8-B, 8-C, 9, 13-A, 13-B, 13-C, 13-D, 14, 15-A, 15-B).

The evidence established that Mark Greenwood is an active teacher who freely expresses his opinions and is Chief Negotiator for the Barrington Education Association. The evidence also established that the administrators of the school district were aware that Mr. Greenwood was the Chief Negotiator for the Association. Constance Parsons was the Vice President of the Union and also an active participant in the debates concerning school policy and procedure. Many other teachers also were active participants in the debate concerning school policy and practices as were Greenwood and Parsons.

Prior to March 13, 1979, consideration was given to the evaluation of teachers and a draft of evaluations was forwarded by the school principal to the superintendent and discussions took place concerning these evaluations. By letters dated March 13, 1979 from Barry Clough to Mark Greenwood and Constance Parsons (Association Exhibits 10 and 17-A), they were notified that they would not be renominated for the following year by the superintendent. The following day, March 14, 1979, they were presented with evaluations which, for the first time, indicated that their performance was inadequate and were also presented with the letters indicating their non-renomination. These two teachers were the only teachers in the elementary school not renominated although many shared the "personality conflict" and disagreement over policy which Greenwood and Parsons had expressed.

The Board majority finds from the evidence and facts presented, and after review of the exhibits that the only factor differentiating Greenwood and Parsons from other teachers was their union status and participation and that was the reason for their non-renomination. The majority makes this finding in recognition that there was no direct testimony to that effect at hearing and finds it from all the circumstances and evidence presented.

RULINGS OF LAW

It is an unfair labor practice under RSA 273-A:5, I. for a public employer "(a) to restrain, coerce or otherwise interfere with its employees in the exercise of rights conferred by this Chapter... (c) to discriminate in the hiring or tenure, or the terms and conditions of employment of its employees for the purpose of encouraging or discouraging membership and any employee organization ... (or) ... (d) to discharge or otherwise discriminate against any employee because he has filed a complaint, affidavit or petition, or given information or testimony under this Chapter..."

The Board has found that the two teachers involved in the unfair labor practice complaint in Barrington were not renominated because of their union connection. This constitutes an unfair labor practice under sections (a) and (c) above. The Board, therefore, sustains those charges. The Board cannot find that such action was taken in violation of Section (d) as charged.

The Board further finds that the burden of establishing the charges is on the party alleging that the actions are an unfair labor practice. Absent some automatic shifting of the burden of proof, not present in this case, the Barrington Education Association must sustain the charges. The Board finds that the charges were sustained in this matter but comments on the burden of proof since the Association seemed to argue at hearing that the mere bringing of its charges required the school board to disprove them. This is not the law.

Further, the Board is not finding in sustaining the unfair labor practice complaints that there exists any right under RSA 273-A for a hearing into reasons that a non-tenured employee or teacher has been discharged by a public employer. The finding in this case is restricted to the charge. That is, that union connected activity was the reason for non-renomination. Further, the Board is making no finding which should be interpreted by any party to indicate that the school board, superintendent of schools or other administrators in the school system are in any way deprived of their rights to run the school system, establish the educational philosophy and implement it. The Board is only deciding this case on these charges and the only issue is whether the non-renewal is the result of union activity which the majority finds is the case. The Board has found that the only creditable connection differentiating the two teachers from other teachers who were renominated is their union office and/or activities. The administrators of the school district are capable and intelligent and from all of the evidence at hearing it is obvious to the Board that they were aware of what was going on in the Barrington School District including who was doing what in connection with union activity.

At the hearing, a motion to dismiss was made because of the name of the party charged. This motion was denied and the Board states for the record that the charge against the Barrington School Board was sufficient to include the charge against its principal, the superintendent of the supervisory union and all other parties to the action complained of under the unfair labor practice charge. All such persons attended the hearings, were aware of the hearings, and there was no prejudice to any party because of the naming of the charged party in the complaint.

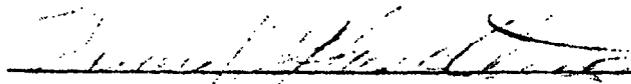
RSA 273-A:6, VI provides for remedies upon the finding of an unfair labor practice. Among those remedies are "reinstatement with back pay ... or such other relief as the Board may deem necessary."

ORDER

Based on the above findings and rulings and the law presented, the Board issues the following order for action by the Barrington School Board and Superintendent who are ordered to:

1. Cease and desist any activity which may discriminate against union officers or members on account of union activity.
2. Renominate and/or reinstate Mark Greenwood and Constance Parsons by offering them 1979-1980 contracts as if originally offered. (Nothing in this order shall require either Mark Greenwood or Constance Parsons to accept employment or work for the Barrington School Board at any time).
3. Remove any reference to non-renewal and the evaluations dated March 14, 1979 from the records of the two teachers and make no reference to such action and/or reports in the future.

Signed this 18th day of July, 1979



EDWARD J. HASELTINE, CHAIRMAN
PUBLIC EMPLOYEE LABOR RELATIONS BOARD

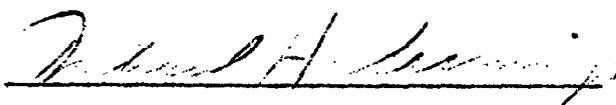
Member Joseph Moriarty concurs in this decision.

Richard H. Cummings, member, dissenting.

I dissent from the findings and order of the Board since it appears to me that the Barrington School Board and administrators were, at all times relevant to the facts and decision, attempting to administer the elementary school and change its philosophy and direction. This intent and the action taken in connection with it are well within the rights of management under RSA 273-A:1, XI.

As the majority has held in its rulings of law, it is the Association's burden to prove that non-renewal of teachers Greenwood and Parsons was for reasons related to union activity. I do not believe the evidence presented at the hearings warrants a finding that that burden was met and do not agree that the employer's decision should be reversed based upon the evidence and circumstances of this case. I, therefore, would deny the complaint and relief requested.

Signed this 18th day of July, 1979



RICHARD H. CUMMINGS, BOARD MEMBER
PUBLIC EMPLOYEE LABOR RELATIONS BOARD

Board clerk Evelyn LeBrun and Board counsel Bradford E. Cook also present.